
Setting Up and Operating a Maryland Super PAC

This memorandum summarizes the rules of the road for Maryland Super PACs, which are groups formed primarily to make “independent expenditures” or “electioneering communications” in state or local elections in Maryland. An “independent expenditure” is an expenditure for a communication expressly advocating the success or defeat of a clearly identified candidate. An “electioneering communication” is a communication that merely refers to a clearly identified candidate, is made within 60 days of an election in which the identified candidate is on the ballot, and can be received by a certain number of individuals.

Unlike traditional Maryland PACs, a Super PAC may accept unlimited contributions from corporations and unions, and unlimited sums from individual contributors, as long as they are U.S. citizens or green card holders. However, a Super PAC’s activities must not be coordinated with a candidate or candidate’s agent, or a political committee established by a candidate. Super PACs can do virtually anything to support or oppose candidates. Often they air advertisements on radio and television, but they may also create websites, may use social media, and can even develop a ground game to identify voters and get out the vote.

Steps to Setting up a Super PAC

Select a Name

The Super PAC’s name must appear in public filings and in most public communications in the form of an “authority line” statement. At a minimum, some initial screening should be done to determine the likelihood of trademark challenges to the PAC’s name, logo, and slogans.

Determine Governance Structure

While not required, we recommend that Super PACs incorporate for liability purposes. Donors also often like to see the PAC run by a board with fiduciary obligations responsible for determining how the money will be spent, rather than a hired political consultant who may have a strong incentive to spend money in a way that is beneficial to the consultant. As an incorporated entity, the Super PAC will need articles of incorporation, bylaws, and organizing resolutions. The Super PAC will also need to designate a registered agent to accept service of process.

Select a Chairman and Treasurer

A Maryland political committee must have two officers — a chairman and a treasurer — each of whom is a registered voter of the state. The officers are jointly and severally responsible for filing all campaign finance reports and for all other PAC activity. A PAC may not receive or disburse funds if there is a vacancy in either of these offices.

Prepare and File Initial Registration With the Maryland State Board of Elections

The Super PAC must register with the Maryland State Board of Elections before engaging in any activity and before opening a bank account. The registration form requires the PAC to identify its name; appoint responsible officers; file a statement of purpose; state whether the PAC will exclusively make independent expenditures, electioneering communications, or both; and identify the elections in which the PAC will participate.

Prepare and File Form 8871 with IRS

The Super PAC must notify the Internal Revenue Service that it is claiming tax-exempt status as a political organization by electronically filing IRS Form 8871, “Political Organization Notice of Section 527 Status.” The notice must be filed within 24 hours of the date on which the organization is established. Form 8871 calls for the

organization's name, address, and purpose; the names and addresses of its officers, custodian of records, and members of its board of directors; the name and address of and relationship to any related entities; and whether it is claiming an exemption from filing the IRS Form 8872, periodic reports of revenues and expenditures, or filing the IRS Form 990 annual information return. To file the 8871 (and to open a bank account), the Super PAC will also need to apply for an Employer Identification Number (EIN) from the IRS.

Open a Bank Account

The Super PAC must open an account in its own name, through which all receipts and disbursements should be made.

Fundraising

A Maryland Super PAC may accept contributions in unlimited sums from individuals (U.S. citizens or green card holders) and other groups or business entities as long as the contributing entity does not derive the majority of its operating funds from state funding. In addition, an applicant or holder of a video lottery operation license or any person who owns an interest in the operation of a video lottery facility in Maryland may not contribute to a PAC organized in support of a candidate for state or local office in Maryland.

Coordination

Independent expenditures or electioneering communications may not be made at the request of, or in coordination with, a candidate or a campaign finance entity of a candidate. The coordination ban also applies to interactions with agents of the candidate and campaign finance entity of a candidate, such as common vendors and employees (present and former).

Coordination may cause the Super PAC's disbursement to be considered an illegal, in-kind contribution if the amount expended exceeds the limit on contributions to the relevant candidate. Such activity can lead to intrusive investigations, significant penalties, and even criminal prosecution. To minimize these risks, every Super PAC should adopt and implement a coordination policy, provide training regarding the policy to its employees and vendors, and exercise care in its interactions with candidates, campaigns, and political parties.

Advertising Disclaimers

In general, any material publicly distributed by a Super PAC that contains text, graphic, or other images relating to a candidate or prospective candidate must include an "authority line" set apart from the rest of the message. The authority line must state the name of the committee responsible for the material, and the name and address of the committee's treasurer (except that the address may be omitted if it is on file with the State Board of Elections), and, if the campaign material supports or opposes a candidate, must state that it has not been authorized or approved by any candidate. Maryland law spells out specific language for this disclaimer, as well as other disclaimer language required for public communications made through electronic media and in other special circumstances. Regulations promulgated by the Federal Communications Commission also apply to automated phone calls and broadcast television and radio ads.

Reporting

Maryland Super PACs must file pre-primary, pre-general, post-general, and annual reports with the State Board of Elections, as well as reports within 48 hours of spending \$10,000 on independent expenditures or electioneering communications. Reports must include details regarding all contributions received and expenditures made. For independent expenditures and electioneering communications, the reports must also identify the candidate the communication supports or opposes, or, in the case of an electioneering communication, the candidate merely referred to in the communication. Given the short turnaround time for these reports, it is important to have good accounting systems in place to make certain that the reports are accurate and filed on time.

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